

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	
Connect America Fund	WC Docket No. 10-90
A National Broadband Plan for Our Future	GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers	WC Docket No. 07-135
High-Cost Universal Service Support	WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime	CC Docket No. 01-92
Federal-State Joint Board on Universal Service	CC Docket No. 96-45
Lifeline and Link-Up	WC Docket No. 03-109
Universal Service Reform – Mobility Fund	WT Docket No. 10-208

**COMMENTS OF NEXUS COMMUNICATIONS, INC.**

Nexus Communications, Inc. (“Nexus”) hereby submits these Comments in response to Section XVII(F) – ETC Service Obligations – of the Further Notice of Proposed Rulemaking (“Further Notice”) released by the Commission on November 18, 2011 in the above-captioned proceeding.<sup>1</sup> Nexus will focus its discussion in these Comments on the questions posed by the Commission in paragraph 1102 of the Further Notice pertaining to the Lifeline program.

Nexus is committed to serving the specific communications needs of low income Americans. Nexus has been designated an eligible telecommunications carrier (“ETC”) in 26 states, pursuant to which it receives Lifeline/Link Up (“Low Income”) funding. Although ETCs may receive funding from both the federal High Cost and Low Income programs, Nexus has

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<sup>1</sup> *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, Docket Nos. WC 10-90, *et al.* (November 18, 2011) (“USF/ICC Order”).

declined all High Cost funding. Nexus currently offers wireless Lifeline service in 18 states, and wireline Lifeline service in 14 states. It also provides services on a prepaid basis, which offers these consumers a simple, effective means of managing their family budgets and eliminating bill shock.

After several years serving its customers via wireline technology, in mid-2009 Nexus began to offer wireless services to satisfy the overwhelming demand for such services in the communities it serves. Consumers have indicated a strong preference for mobile wireless services in recent years and Nexus has worked to satisfy this demand by growing and investing in wireless technology. Because of the strong consumer preference for wireless services, Nexus' wireless offerings have been highly successful in the marketplace. Indeed, Nexus' wireless services have been so successful in meeting the objectives of the Low Income program – namely, getting voice services to this underserved population – because prepaid wireless services are uniquely positioned to meet the needs of low income, most-at-risk and most-in-need Americans, and provide the crucial link they need to vital information.

**I. THE RECENT MODIFICATION TO FCC RULE 54.101 IS UNSOUND POLICY AND PROCEDURALLY FLAWED**

The Commission's Order on Reconsideration released on December 23, 2011<sup>2</sup> represents a significant setback for the Low Income program. Specifically, the Commission modified the language of 47 C.F.R. § 54.101(a) and ruled that:

only carriers that provide “voice telephony” as defined under [47 C.F.R. §] 54.101(a) as amended using their own facilities will be deemed to meet the requirements of [47 U.S.C. §] 214(e)(1). Thus, a Lifeline-only ETC does not meet the “own facilities” requirement of [47 U.S.C.] section 214(e)(1) if its only facilities are those used to provide functions that are no longer supported “voice

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<sup>2</sup> *Connect America Fund, et al.*, Order on Reconsideration, Docket Nos. WC 10-90 *et al.* (December 23, 2011) (“Order on Reconsideration”).

telephone service” under amended rule 54.101, such as access to operator service or directory assistance.<sup>3</sup>

Nexus (and presumably many other ETCs) have provisioned their wireless services in reliance on the prior, longstanding version of Rule 54.101(a). Now, the Commission has suddenly – and with virtually no advance notice to the industry – attempted to pull the rug out from under an entire group of carriers serving low income consumers. This action is troubling for a variety of reasons.

First, the Commission’s modification of Rule 54.101(a) represents a dramatic change to the *Low Income program* – but this change was implemented as part of a regulatory proceeding intended to address the *High Cost program*. The Low Income program and the High Cost programs address entirely different policy objectives. The Low Income program is a direct subsidy to low income consumers. Unquestionably, the program puts telephones in the hands of disadvantaged Americans who otherwise would not be able to afford them. Nexus recognizes that the Commission is concerned about the contribution rate of the federal universal service fund (“USF”), from which both the High Cost and Low Income programs draw their funding. However, these concerns are best addressed through reforms to the High Cost program, which subsidizes carriers, rather than low income Americans.

In addition, the Commission’s modification of Rule 54.101 is procedurally flawed. There were virtually no comments filed or other factual support entered into the underlying record of the above-captioned dockets to justify the Commission’s modification of this rule. In the Notice of Proposed Rulemaking released in February 2011, the Commission failed to provide the public with adequate notice that its attempt to “simplify” the characteristics of voice telephony service

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<sup>3</sup> Order on Reconsideration at ¶ 4.

would have a profound impact on wireless ETCs.<sup>4</sup> As a result, Nexus and TracFone Wireless – two ETCs with significant (and opposing) interests in Link Up – did not address this issue in comments. TracFone has been particularly active in these dockets, making numerous filings over the years. If Nexus, TracFone and other ETCs were given adequate notice of this possible rule change, as required by the Administrative Procedure Act,<sup>5</sup> the record would be replete with comments on this issue. Because it did not, the Commission lacks any serious record on which to base this rule change. In addition, the USF/ICC Order itself states in the section in which Rule 54.101 was modified that it does not apply to Low Income-only ETCs. *See* USF/ICC Order at ¶ 74, n. 105 (“Throughout this Order, unless otherwise specified, the term ‘ETC’ does not include ETCs that are designated only for the purposes of the low income program.”). The Order on Reconsideration fails to address the Commission’s statement that Low Income ETCs would not be affected by the rule change.

The Commission has another ongoing rulemaking that is focused exclusively on Lifeline and Link Up,<sup>6</sup> in which it is expected to release an order later this month.<sup>7</sup> It is therefore curious that the Commission chose to adopt significant rule change in the Low Income program as part of the High Cost USF proceeding – particularly at a time when there is an on-going rulemaking that specifically addresses the Low Income program. For all of these reasons, Nexus believes

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<sup>4</sup> *Connect America Fund, et al.*, Notice of Proposed Rulemaking, Docket Nos. WC 10-90 *et al.* 26 FCC Rcd. 4554 at ¶ 95 (Feb. 9, 2011).

<sup>5</sup> *See* U.S.C. § 553(b)-(c); *American Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 235 (D.C. Cir. 2008) (“The APA requires an agency to publish ‘notice’ of ‘either the terms or substance of the proposed rule or a description of the subjects and issues involved,’ in order to ‘give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments’.”).

<sup>6</sup> *See Lifeline and Link Up Reform and Modernization, et al.*, Notice of Proposed Rulemaking, Docket Nos. WC 11-42, *et al.*, 26 FCC Rcd. 2770 (2011).

<sup>7</sup> *See FCC Announces Tentative Agenda for January Open Meeting*, Public Notice (released Jan. 10, 2012) (indicating that an order in the Lifeline/Link Up reform docket will be considered at the FCC’s open meeting scheduled for January 31, 2012).

that the Commission's modification of Rule 54.101 in the Order on Reconsideration is unwise policy and runs afoul of the Administrative Procedure Act, 5 U.S.C. § 500 *et seq.*

## **II. PREPAID WIRELESS IS THE IDEAL LOW INCOME PROGRAM SERVICE**

In paragraph 1102 of the Further Notice, the Commission requests comment on how it can ensure that low income consumers that only wish to subscribe to voice service continue to have the ability to receive Lifeline benefits. Nexus submits that prepaid wireless is the ideal service to accomplish this objective. Indeed, given the strong consumer preference for, and benefits of, wireless services, Nexus submits that the Commission should seriously consider whether it is advisable for USF revenue to continue to subsidize landline telephone service.

For over twenty-five years, the federal government has funded programs connecting low income Americans to the telephone system that knits the nation together.<sup>8</sup> Over the years, the services supported by the Low Income program have grown more varied and sophisticated, and change has been driven by consumers themselves. Low income consumers are pursuing new ways of communicating, new technologies, and new service offerings and the Lifeline program has adapted and now encompasses the provision of wireless services to low income Americans. Wireless, especially prepaid wireless, is the growth engine of the program, and it has increased participation dramatically by providing services tailored to the needs of program participants.

Wireless telephone service is now the dominant form of communication in the nation,<sup>9</sup> and the availability of this technology is virtually universal.<sup>10</sup> Now that wireless voice service

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<sup>8</sup> The Lifeline program was created by the FCC in 1984. *MTS and WATS Market Structure, and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Recommended Decision, CC Docket nos. 78-72 and 80-286, 49 Fed. Reg. 48325 (rel. November 23, 1984) (recommending the adoption of federal Lifeline assistance measures); Decision and Order, CC Docket nos. 78-72 and 80-286, FCC 84-637, 50 Fed. Reg. 939 (rel. December 28, 1984) (adopting the Joint Board's recommendation).

<sup>9</sup> *See, e.g.*, FCC 10-81, "Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services," May 20, 2010, p.5, p.11 (Ninety percent of

has become ubiquitous, it is quickly displacing the older wireline system.<sup>11</sup> It is not surprising that customers prefer wireless service to landline service by a large margin. Wireless service by its very nature is portable, and it has allowed Americans to adapt to a new lifestyle of persistent connectivity with friends and family, something that was never possible with landline service. Even the lowest-priced wireless handsets offer features that landline phones do not, such as text messages, built-in phonebooks, and mobile voicemail. The cost of wireless service has also decreased dramatically, making it easily affordable for the majority of Americans<sup>12</sup> and consumer satisfaction with wireless offerings has reached higher levels.<sup>13</sup>

Wireless also provides critical benefits for low income Americans that improve their security, mobility, and economic welfare. Numerous studies have demonstrated that wireless phones help low income Americans in profound ways.

- **Security.** Wireless phones provide security to low income Americans. Survey respondents prefer wireless to landline for emergency uses by more than three to one, and 48 percent of Americans have already used a wireless phone in an emergency.<sup>14</sup> Studies have called

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Americans have a mobile device, and each month the average user spends 708 minutes talking on a wireless device and sends 388 text messages).

<sup>10</sup> *Id.*, p.7 (99.6 percent of Americans are served by one or more mobile voice providers).

<sup>11</sup> *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2009*, by Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics.

<sup>12</sup> CTIA, Semi-annual wireless industry survey, available at <http://www.ctia.org/advocacy/research/index.cfm/AID/10316>.

<sup>13</sup> CTIA, The Wireless Industry Facts: An Independent Review, available at [http://files.ctia.org/pdf/082010\\_Independent\\_Assessment\\_of\\_Wireless\\_Industry.pdf](http://files.ctia.org/pdf/082010_Independent_Assessment_of_Wireless_Industry.pdf).

<sup>14</sup> Amy Farnsworth, *A cellphone plan to bridge digital divide: Firms and feds offer free connections to customers shut out by high costs*, Christian Science Monitor, July 2, 2009; Sullivan, N.P. *Cell phones provide significant economic gains for low-income American households: A review of literature and data from two new surveys* at 15; available at [http://www.newmilleniumresearch.org/archive/Sullivan\\_Report\\_032608.pdf](http://www.newmilleniumresearch.org/archive/Sullivan_Report_032608.pdf) (“Sullivan Report”).

wireless phone service “essential” to low income Americans, largely because it provides a constant connection with family, friends, and others who can offer support and protection.<sup>15</sup>

- **Mobility.** Low income Americans benefit, even more than other wireless customers, from the mobility of their phones. Low income customers tend to move around more than other customers, making landlines even less relevant. For homeless Americans, wireless service is the only realistic means of voice communication, especially as payphones disappear.<sup>16</sup> Advocates report that wireless phones are crucial for the homeless, who use them to stay in touch with their families, arrange medical appointments and contact social service agencies.<sup>17</sup>
- **Employment.** Wireless service is very important in helping low income Americans obtain – and maintain – jobs. Unless they have a wireless phone and accessible voicemail, low income job applicants are at a serious disadvantage during the interview process. Once employed, low income Americans use their wireless phones to contact employers and co-workers. It would be difficult to imagine navigating the responsibilities and assignments of the work world without a mobile telephone.<sup>18</sup>

Prepaid billing is perhaps the most important aspect of wireless service for many low income Americans. The flat fees attached to most postpaid plans are regressive and are disproportionately onerous on low income customers.<sup>19</sup> By contrast, prepaid wireless service costs only as much as a customer uses it. The financial burden is more precise and fair, and this is crucial to budget-conscious families. The Commission has noted that the “prepaid feature,

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<sup>15</sup> Janice A. Hauge, *et al.*, *Whose call is it? Targeting universal service programs to low-income households’ telecommunications preferences*, 33 *Telecomm. Policy* 129, 130 (2009), available at [http://warrington.ufl.edu/purc/purcdocs/papers/0805\\_Hauge\\_Whose\\_Call\\_is.pdf](http://warrington.ufl.edu/purc/purcdocs/papers/0805_Hauge_Whose_Call_is.pdf).

<sup>16</sup> Kevin Graham, *Wireless a Lifeline for Homeless*, *St. Petersburg Times*, April 9, 2007.

<sup>17</sup> *Id.*

<sup>18</sup> Sullivan Report at 22.

<sup>19</sup> Reply Comments of the Minority Media and Telecommunications Council, *In the Matter of Fostering Innovation and Investment in the Wireless Communications Market; A National Broadband Plan for Our Future*, Notice of Inquiry, GN Docket Nos. 09-157, 09-51, FCC 09-66 (rel. Aug. 27, 2009).

which essentially functions as a toll control feature, may be an attractive feature to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts.”<sup>20</sup> As a result, low income customers are migrating quickly to wireless, and their rate of switching to wireless only is higher than that of the rest of the population.<sup>21</sup> The success of prepaid wireless among low income households has rejuvenated the Lifeline and Link Up programs.

Finally, in order to ensure that low income consumers that only wish to subscribe to voice service continue to have the ability to receive Lifeline benefits, Nexus submits that the Commission should not require wireless Lifeline providers to offer broadband services, even on an optional basis, if it is at the expense of basic voice services. While Nexus has supported the concept of a pilot program to fund broadband services, the principal goal of the Low Income program must continue to be that low income consumers have access to basic telecommunications services at affordable rates.<sup>22</sup> A broadband mandate could destroy the business model of prepaid wireless ETCs, and price out many low income consumers. Inexpensive wireless handsets (often refurbished) are a critical component of the business model of many wireless ETCs, including Nexus. A broadband mandate, even as an optional feature, would require wireless ETCs to deploy much more expensive broadband-capable handsets and thereby could eliminate any profit margin from the business.

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<sup>20</sup> *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in New York, Florida, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia*, CC Docket No. 96-45, FCC 08-100, Released April 11, 2008.

<sup>21</sup> Hauge at 141; *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2009*, by Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics.

<sup>22</sup> See 47 U.S.C. § 254(b)(3).

### **III. MODEST REFORMS TO THE LOW INCOME PROGRAM CAN DRAMATICALLY REDUCE INCIDENTS OF WASTE, FRAUD AND ABUSE**

Nexus recognizes that the Low Income program is not without its difficulties. However, none of the challenges is intractable. Nexus firmly believes issues of waste, fraud and abuse can be immediately reduced through modest reforms. For example, Nexus, from the very onset of providing wireless Lifeline services, voluntarily self-imposed a nationwide policy of de-enrolling consumers from the program after 60 days of non-use. Nexus supports and encourages the adoption of a mandatory 60-day de-enrollment requirement for all ETCs, for 100 percent of the customer base with no exceptions for “statistically-valid sample” type limitations. Additionally, Nexus supports the adoption of a requirement that all ETCs report the number of de-enrolled subscribers on a monthly basis to the appropriate state commission (or the Commission for states that do not regulate wireless ETCs).

Nexus has consistently supported the creation of a national database to definitively eliminate duplicative supports and to provide a definitive means to determine consumers’ eligibility. Nexus believes that a national database, with mandatory participation by all ETCs, can and should be used to definitively establish eligibility for every applicant seeking low income subsidies based on one of the qualifying programs such as food stamps or Medicare.

### **IV. CONCLUSION**

Low Income Americans were among the first to recognize how well prepaid wireless meets their needs by providing security, mobility, and cost control that was not being offered by traditional landline services. Their response has been swift and clear, and the rate at which low income customers abandon landlines in order to make the move to prepaid wireless is increasing. The Commission should recognize that prepaid wireless is the ideal service to ensure that low

income consumers who only wish to subscribe to voice service continue to have the ability to receive Lifeline benefits and should adopt rules and policies that further this objective.

Respectfully submitted,

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